

COUNTY OF ERIE
LOCAL LAW NO. ____-2006
LOCAL LAW INTRO. NO. 10-2006

A LOCAL LAW in relation to a mandatory notification requirement for commercial and residential lawn pesticide applications.

BE IT ENACTED BY THE LEGISLATURE OF ERIE COUNTY AS FOLLOWS:

Section 1. Title.

This law shall be known as the Erie County Mandatory Pesticide Notification Act.

Section 2. Legislative Intent.

The Erie County Legislature hereby finds, declares and determines that individuals and their personal property can come into unintended contact with pesticides applied on abutting property from commercial and residential lawn applications. This Legislature further finds that pesticides may pose health and safety risks to the citizens of this County.

In December 2003, through passage of Erie County Local Law No. 8 of 2003, Erie County opted into the New York State pesticide notification program for one year. The Erie County Local Law provided for a one-year sunset provision, with the required review by the Erie County Environmental Management Council at the end of the year to determine the effectiveness of the law.

On October 5, 2004, the Erie County Environmental Management Council submitted its one-year review to the Erie County Legislature and the Erie County Executive. The Council recommended that the Pesticide Notification Law be renewed. The County Legislature and Executive reenacted the law in late 2005, this time for a two-year period. Due to procedural circumstances, the law could not be implemented by the County Department of Health until 2006. The law did not require the Erie County Environmental Management Council to evaluate its implementation, but the ECEMC continued to monitor the implementation and enforcement of the law by the County Department of Health, the compliance with the law by the commercial lawn care industry, retailers, and do-it-yourself applicators, and the ongoing and ever evolving educational programs offered to the public.

On October 25, 2006, the Erie County Environmental Management Council reported that Erie County has successfully implemented the Neighbor Notification Law in 2006 and that the Neighbor Notification Law should be renewed again for 2007. Specifically, the ECEMC concluded that the implementation and efficacy of the Neighbor Notification Law can reasonably be expected to continue to improve each subsequent year that it is in effect through continued outreach and education programs for the public, and continued compliance monitoring of commercial applicators, retailers, and do-it-yourself

applicators by the Department of Health. In addition, the ECEMC determined that since the Neighbor Notification Law has been successfully tested twice, and its successful implementation has been demonstrated that this law can and should be enacted permanently.

Therefore, the Erie County Legislature does hereby conclude that Erie County should adopt the notice requirements for the commercial and residential lawn application of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this Local Law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and the regulations promulgated thereunder.

Section 3. Definitions.

All terms used herein shall be as defined in Article 33 of the New York Environmental Conservation Law:

- a. "Abutting property" shall mean any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.
- b. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.
- c. "Commercial lawn application" means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. For the purposes of this local law the following shall not be considered commercial lawn application:
 - (1) the application of pesticide for the purpose of producing an agricultural commodity;
 - (2) residential application of pesticides;
 - (3) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
 - (4) the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building, or public park; and
 - (5) the application of pesticides on golf courses or turf farms.
- d. "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation.
- e. "Dwelling" means any building or structure or portion thereof which is occupied

in whole or in part as the home, residence or sleeping place for one or two families.

- f. "General use pesticide" means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of the New York Environmental Conservation Law.
- g. "Multiple dwelling" means any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other.
- h. "Pesticide" means:
 - (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- i. "Premises " means land and improvements or appurtenances or any part thereof.
- j. "Residential lawn application " means the application of general use pesticides to ground, trees, or shrubs on property owned by or leased to the individual making such application. For the purposes of this local law the following shall not be considered residential lawn application:
 - (1) the application of pesticides for the purpose of producing an agricultural commodity;
 - (2) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
 - (3) the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and
 - (4) the application of pesticides on golf courses or turf farms.

Section 4. Notification Requirements For Commercial And Residential Lawn Applications.

The provisions in this section are adopted in their entirety and without exception, pursuant to section 33-1004 of the New York Environmental Conservation Law.

a. Retail Consumer Information Sign.

(1) All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the Commissioner pursuant to subdivision one of section 33-1005 of the Environmental Conservation Law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. Prior Notification of Commercial Lawn Applications.

(1) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of the New York Environmental Conservation Law, to:

- a. occupants of all dwellings on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to
- b. owners, owners' agents, or other persons in a position of authority for all other types of premises that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the Commissioner.

(2) Such prior notification provisions shall not apply to the following:

- a. the application of anti-microbial pesticides and anti-microbial products as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);
- b. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;
- c. the use of non-volatile insect or rodent bait in a tamper resistant container;
- d. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;
- e. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;
- f. the use of boric acid and disodium octaborate tetrahydrate;
- g. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;
- h. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;
- i. the application of a pesticide by direct injection into a plant or the ground;
- j. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;

- k. the application of a pesticide to the ground or turf of any cemetery;
and
- l. any emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this title. Upon making an emergency application, the person making such application shall notify the Commissioner of the New York State Department of Health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number, or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

c. Posting of Residential Lawn Applications.

- (1) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.
- (2) The markers required pursuant to this paragraph shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

Section 5. Enforcement.

Pursuant to section 33-1004 of the New York Environmental Conservation Law, the Erie County Department of Health shall enforce the provisions of this local law administratively, provided that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in Section 6 of this law and shall be payable to and deposited with Erie County.

Section 6. Penalties.

a. Administrative Sanctions.

- (1) A person providing a commercial lawn application who violates any provision of this local law shall be liable for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense after a hearing or opportunity to be heard.

- (2) An owner or owner's agent of a multiple dwelling or owner, owner's agent or a person in a position of authority for all other types of premises, who violates any rule or regulation pursuant to subdivision b(1)(b) of section 4 of this local law (Prior Notification of Commercial Lawn Applications), and a person who violates any provision of subdivision c of section 4 (Posting of Residential Lawn Applications), shall for a first such violation, in lieu of a penalty, be issued a written warning and shall also be issued educational materials prepared by the Commissioner pursuant to subdivision two of section 33-1005 of the New York Environmental Conservation Law. Such person shall, however, for a second violation, be liable for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation after a hearing or opportunity to be heard.
- (3) A person who violates the provisions of subdivision a of section 3 of this local law (Retail Consumer Information Sign) shall be issued a warning for the first violation and shall be provided seven days to correct such violation; and shall be liable for a civil penalty not to exceed one hundred dollars for a second violation, and not to exceed two hundred fifty dollars for a subsequent violation after a hearing or opportunity to be heard.

b. Criminal Sanctions for Persons Providing Commercial Lawn Applications.

- (1) Any person providing a commercial lawn application and having the culpable mental states defined in subdivision one or two of section 15.05 or in section 20.20 of the New York Penal Law who violates any provision of this local law, except an offense relating to the application of a general use pesticide, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.
- (2) Any person providing a commercial lawn application who violates any provision of this local law relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed twenty-five hundred dollars. If the conviction is for a subsequent offense committed after the first such conviction of such person under this subdivision, punishment shall be a fine not to exceed five thousand dollars.

Section 7. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 8. Notice Requirements to State Officials.

a. Within twenty days after adoption of this law, the Clerk of the Erie County Legislature shall forward one certified copy thereof to the Commissioner of the New York State Department of Environmental Conservation and one to the New York State Attorney General.

Section 9. Repeals.

Erie County Local Law No. 1 of 2005 is hereby repealed.

Section 10. Effective Date.

a. This local law shall take effect on the first day of January after it shall have been adopted and filed with the Office of the Secretary of State pursuant to Section 27 of the New York State Municipal Home Rule Law.

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